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Notion of hybrid weapon in hybrid conflict – legal assessment of Russian Federation’s use of energy weapon against European allies of Ukraine

Introduction

Russian Federation has used energy supplies as a weapon to influence and coerce its neighbours and perceived enemies since 1990¹. Moscow also used the “energy weapon” against Ukraine pressing ahead with its economic aggression well before the actual day of the invasion².

Was it a peacetime strategic coercion or the use of energy supplies as a weapon in an attempt to weaken Ukraine ahead of the full-scale military aggression?

¹ Shortly after Lithuanian independence was restored on 11 March 1990, President of the Union of Soviet Socialist Republics Mikhail Gorbachev issued an ultimatum, demanding its annulment. The lack of Lithuanian compliance resulted in a 78 day economic blockade, which completely halted oil deliveries to Lithuania and led to an 84% decrease in gas supplies – V. Slakaityte, I. Surwillo, *Energy as a weapon – decoding blackmail tactics in Europe*, <https://www.diis.dk/en/research/energy-as-a-weapon-decoding-blackmail-tactics-in-europe> (accessed: 12.10.2024). See also O. Sukhodolia, *Energy weapon in a geopolitical strategy of Russia*, National Kyiv 2020; J. Hedenskog, R.L. Larsson, *Russian leverage on the CIS and the Baltic States*, Swedish Defence Research Agency Report No. FOI-R-2280-SE, July 2007, <https://www.researchgate.net/publication/228877758-Russian-Leverage-on-the-CIS-and-the-Baltic-States> (accessed: 10.10.2024).

² In early November 2021, for instance, Russia blocked coal supplies to Ukraine across its border, saying that the Russian railway operator encountered some technical problems. Amidst high energy prices, Ukraine had to purchase coal on the global market. On 7 February 2022, Belarus stopped the transit of oil products from the Orlen Lietuva refinery, which strained some parts of the Ukrainian energy system and put political pressure on the government. See O. Sukhodolia, *Ukrainian energy sector under military attack: lessons for resilience*, [in:] T. Jermalavičius (ed.), *War and energy security: lessons for the future*, Tallinn 2023, p. 48.

The Russian understanding of the overlap between its energy and foreign policies was reflected already in the 2003 Energy Strategy, which noted that Russia's "significant energy resources and powerful fuel-energy complex" was "an instrument for conducting domestic and foreign policy" and that "the role of the country on global energy markets to a great degree determines its geopolitical influence"³.

US senators contended at the Munich Security Conference in February 2018 that "Russia uses its energy power, ability to bully and bribe and intimidate", along with "propaganda and information distribution", to exert political power on other States⁴.

Russia full-scale invasion of Ukraine proved to be the most important practical test of this policy as Moscow was clearly using its energy weapon to make a point and pressure European states who sided with Ukraine in the conflict.

On 26 April 2022 Russia flexed these energy muscles against Poland and Bulgaria. In a Tweet, Gazprom announced that it "fully halts gas supplies to Bulgaria's Bulgargaz and Poland's PGNiG due to their failure to pay in rubbles". European Commission President Ursula von der Leyen denounced the move as a "blackmail"⁵.

Three months later, European Commissioner for Energy Kadri Simson spoke, after subsequent disruptions, about "examples of arbitrary interruptions of gas supply, blackmail and the use of energy as a political weapon by Russia since the war against Ukraine began"⁶. While the Extraordinary Energy Council itself accused Moscow of "continuously using energy supplies as a weapon"⁷, President Volodymyr Zelenskyy stated this was "the gas war that Russia is waging against Europe is a form of terror"⁸.

³ J. Lough, *Russia's energy diplomacy*, pp. 2–3, https://www.chathamhouse.org/sites/default/files/19352_0511bp_lough.pdf (accessed: 10.10.2024).

⁴ A. Molis et al., *Mitigating risks of hybrid war: search for an effective energy strategy in the Baltic States*, „Journal on Baltic Security” 2018, No. 4(2), p. 25.

⁵ M. Murphy, A. Davies, *Ukraine war: Russia gas supply cuts 'blackmail', says EU*, <https://www.bbc.com/news/world-europe-61240499> (accessed: 11.10.2024).

⁶ European Commission, Opening remarks of Commissioner Simson at the press conference of the Extraordinary Energy Council of 26 July 2022, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_4727 (accessed: 17.11.2024); „There is a clear pattern of Russian behaviour to create uncertainty, increase prices and undermine the EU unity. This pattern is unlikely to change. We know that gas deliveries can stop any moment”.

⁷ Council of the EU, *Member states commit to reducing gas demand by 15% next winter*, Press Release 717/22, <https://www.consilium.europa.eu/en/press/press-releases/2022/07/26/member-states-commit-to-reducing-gas-demand-by-15-next-winter/pdf/> (accessed: 17.11.2024).

⁸ President of Ukraine, *The gas war that Russia is waging against Europe is a form of terror, so it is necessary to hit back – address by the President of Ukraine*, <https://www.president.gov.ua/en/news/gazova-vijna-yaku-rosiya-vede-proti-yevropi-ce-riznovid-tero-76669> (accessed: 5.10.2024).

The German economy minister Robert Habeck and a US National Security Council spokesperson spoke about using gas “as a weapon”⁹ and French Energy Transition Minister Agnes Pannier-Runacher accused Russia of “using gas as a weapon of war”, speaking after Gazprom said it would suspend gas deliveries to the French energy company Engie)¹⁰.

Such designations were problematic in that respect that the mentioned NATO countries started using the term a “weapon of war” in relation to situations that do not involve use of violence. Meanwhile, the concept of weapons is determined by their perception as “means and methods of injuring the enemy”¹¹ during “hostilities” – the term referring to the “physical, armed clashes between conflict parties”¹².

The EU Council Regulation 2022/2578 also refers to “Russia’s weaponisation of energy (gas supply)”¹³, the aim of this study is a legal assessment of the Russian instrument of energy blackmail from the perspective of the definition of weapons in the law of armed conflict and a conceptual apparatus of the law on use of force in international relations.

The study also introduces innovative concepts of “hybrid conflict” and “hybrid weapon” as exemplified by the Russian use of “energy weapon” against Ukraine and the European members of the Ukraine Defence Contact Group.

Finally, the notion of “energy weapon” is presented in the context of the Moscow’s energy blackmail of Kyiv in the years 2005–2022.

A small terminological note to start with. “Energy weapon” as a term generally refers to “a weapon or system that uses directed energy, rather than kinetic energy, to incapacitate, damage, or destroy enemy equipment, facilities, and/or personnel”¹⁴. Directed-energy weapon include high-energy laser and high-powered microwave weapons¹⁵.

⁹ A. Lawson, ‘Gas blackmail: how Putin’s weaponised energy supplies are hurting Europe’, <https://www.theguardian.com/world/2022/jul/15/gas-blackmail-how-putins-weaponised-energy-supplies-are-hurting-europe> (accessed: 5.10.2024); T. Gardner et al., *Russia using energy as weapon, White House says about Nord Stream shutdown*, <https://www.reuters.com/business/energy/russia-using-energy-weapon-white-house-says-about-nord-stream-shutdown-2022-09-02/> (accessed: 3.11.2024).

¹⁰ M. Murphy, *Nord Stream 1: Russia shuts major gas pipeline to Europe*, <https://www.bbc.com/news/world-europe-62732835> (accessed: 28.09.2024).

¹¹ International Committee of the Red Cross, *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*, Geneva 2009, p. 43.

¹² International Committee of the Red Cross, *How does law protect in war?*, https://casebook.icrc.org/a_to_z/glossary/hostilities (accessed: 13.04.2024).

¹³ Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices (OJ L 335, 29.12.2022, pp. 45–60), Preamble, sections 1, 5.

¹⁴ Joint Chiefs of Staff, *Joint electromagnetic spectrum operations*, Joint Publication 3-85, 22.05.2020, p. GL-6.

¹⁵ *Department of Defense directed energy weapons: background and issues for congress*, Congressional Research Service Report R46925, p. 1, <https://sgp.fas.org/crs/weapons/R46925.pdf> (accessed: 5.11.2024).

This study focuses on “energy as a weapon”, using the term to describe the action when “one State uses or threatens to use its energy resources to compel or deter another State”¹⁶.

The analysis begins with a literature review regarding a notion of a “energy weapon”. A normative definition of a “weapon” in the law of armed conflict follows. The juxtaposition of both concepts results in introduction of a new conceptual categories of a “hybrid conflict” and a “hybrid weapon” (an instrument of non-military coercion and a method of “imposing our will on the enemy” through a non-violent mechanism for a control of adversary’s policy and strategy).

The notion of “energy weapon”

Much has been written about the weaponisation of energy, especially in the context of the Arab oil embargo of 1973–1974 and the 2022 EU–Russia energy war. The “Arab oil weapon” or “Arab oil embargo” refers to the Organization of Arab Petroleum Exporting Countries (OAPEC) use of oil as a political tool between October 1973 and March 1974¹⁷.

While the literature on energy as geopolitical leverage begins with the 1973 seminal work of Robert O. Keohane and Joseph S. Nye¹⁸, M.D. Taylor, a US general and diplomat, was the first official to use publicly “energy weapon” as a term in 1976: “For the USSR, the aggressive use of the oil weapon by the producer countries is a priceless asset, providing a peaceful and seemingly innocent means of undermining NATO and indeed entire Western capitalist system without direct Soviet involvement. For the Kremlin, this must appear a thoroughly enjoyable economic war by proxy”¹⁹.

¹⁶ Á.D. Hartvig et al., *The economic and energy security implications of the Russian energy weapon*, „Energy” 2024, No. 294, p. 1. See also T. Van de Graaf, J.D. Colgan, *Russian gas games or well-oiled conflict? Energy security and the 2014 Ukraine crisis*, „Energy Research and Social Science” 2024, No. 24, p. 59. Referring to “one State’s threat or action involving energy resources to compel or deter another State in the short-term”.

¹⁷ L. Crescentini, *Energy as weapon: lessons from the Arab oil embargo and the war in Ukraine*, <https://www.orfonline.org/research/energy-as-weapon-lessons-from-the-arab-oil-embargo-and-the-war-in-ukraine> (accessed: 3.11.2024). The weaponisation of oil comprised two schemes: the embargo itself and production cutbacks 5% per month starting from October 1973 to prevent targeted countries from purchasing oil from other consumers (25 percent of overall Arab oil supply was cut until March 1974). Arab oil producers labelled consumer states into three categories: „friendly”, i.e., countries that provided material help to the Arabs; „neutral”; and „unfriendly”, i.e., countries that used their armed forces to help Israel. Oil deliveries to countries differed on the basis of the assigned label; friendly nations would receive the average amount of oil delivered in 1973, unfriendly nations would receive no oil at all, and neutral nations would have access to whatever was left.

¹⁸ See more R.O. Keohane, J.S. Nye, *Power and interdependence*, „Survival” 1973, No. 15(4).

¹⁹ A. Prokip, *Transatlantic energy relations: historical legacy, current support, and future prospects*, [in:] T. Jermalavičius (ed.), op. cit., p. 10.

There is still no clear definition for an energy weapon, and the joint statement on Nord Stream 2 by the United States and Germany did not define it²⁰. Subsequently, the term is easily misused and often abused²¹. Nevertheless, according to Kristine Berzina, “a complete gas cut-off for political rather than commercial intent would almost surely fall into that category”²². The intent-based determination has been also supported by the NATO Energy Security Centre of Excellence²³.

Gabriel Collins describes “a Russian energy coercion” as “a price and physical volume manipulation of crude oil or natural gas supplies amid political tensions to pressure consumers located in Central and Eastern Europe and the former Soviet countries”²⁴. The use of energy weapons “in peacetime” can be outlined as “manipulation of targeted countries through the main sectors of the economy or critical national companies (threat of “economic destruction” of the country in case Russian interests are not considered) and politics (corruption, bribery and blackmail of officials and politicians by illegal schemes and transactions)”²⁵.

Margarita Balmaceda speaks about the “use of energy resources as foreign policy »weapons«”²⁶, while Benjamin Schmitt uses a phrase about “a political weapon against the Transatlantic community”²⁷.

For Robert Seely, an “energy weapon” is “a non-military tool of State power to achieve political aims” in “a new kind of conflict” that “allows the aggressor to play to its strengths and which is not dependent on conventional military force”²⁸.

²⁰ US Department of State, *Joint statement of the United States and Germany on support for Ukraine, European energy security, and our climate goals*, <https://www.state.gov/joint-statement-of-the-united-states-and-germany-on-support-for-ukraine-european-energy-security-and-our-climate-goals/> (accessed: 29.10.2024): „Should Russia attempt to use energy as a weapon or commit further aggressive actions against Ukraine, Germany will act at the national level and in the European Union, and press for effective measures, including sanctions (...). This pledge aims to ensure that Russia does not use any pipeline, including Nord Stream 2, to achieve aggressive political goals by using energy as a weapon”.

²¹ N. Tsafos, *The Energy weapon – revisited*, <https://www.csis.org/analysis/energy-weapon-revisited> (accessed: 12.10.2024).

²² *Europe’s gas crisis and Russian energy politics: experts respond*, <https://www.huri.harvard.edu/tcup-commentary/europes-gas-crisis-russian-energy-politics> (accessed: 29.10.2024).

²³ V. Butrimas et al., *Hybrid warfare against critical energy infrastructure: the case of Ukraine*, p. 3, <https://www.enseccoe.org/publications/hybrid-warfare-against-critical-energy-infrastructure-the-case-of-ukraine/> (accessed: 21.10.2024).

²⁴ G. Collins, *Russia’s use of the „energy weapon” in Europe*, <https://www.bakerinstitute.org/research/russias-use-energy-weapon-europe> (accessed: 1.10.2024).

²⁵ O. Sukhodolia, op. cit., p. 29.

²⁶ *Europe’s gas crisis...*

²⁷ Ibidem.

²⁸ R. Seely, *A definition of contemporary Russian conflict: how does the Kremlin wage war?*, „Henry Jackson Society Russia and Eurasia Studies Centre Research Paper” 2018, No. 15, p. 4, <https://henryjacksonsociety.org/wp-content/uploads/2018/06/A-Definition-of-Contemporary-Russian-Conflict-new-branding.pdf> (accessed: 16.10.2024).

Such conflict is “highly political”²⁹. In addition to Seely, at least one more author defines gas cut-off as “an act of war”³⁰.

For Michael Carnegie LaBelle, at the core of the “energy weapon” is the sovereignty of state³¹ as he recognises four components of the energy weapon: 1) interdependence, 2) energy security, 3) neoliberal economics, and 4) “domestic sovereignty’ of liberal democracies”³². As the “energy sovereignty of states is violated”, there is “a direct impact on economic activities and household budgets” while “an externally created crisis that targeted technical competence and political legitimacy of State institutions and politicians”³³.

To conclude, an “energy weapon” is a non-military tool of State power to achieve political aims in a new kind of conflict – a “hybrid conflict” – by manipulation of targeted countries through the main sectors of the economy (a threat or actual disruption of supplies) or politics (corruption, bribery and blackmail of officials and politicians through use of illegal schemes and transactions). Thereby, “energy weapon” could be used as a tool of foreign policy as well as an instrument of defence and security policy. To illustrate, in peacetime the Nord Stream pipelines contribute to European dependency. Only when there is an active threat of war or an ongoing military operation – the same infrastructure transforms into an instrument of control – a hybrid weapon.

The notion of weapon in the law of armed conflict

The term “weapon” is not a legal term of art used in the law of armed conflict – “means” and “methods” of warfare are.

“Methods of warfare” mean attacks and other activities designed to adversely affect the enemy’s military operations or military capacity, as distinct from the means of warfare used during military operations, such as weapons³⁴.

Many military operations, such as resupply, transportation of troops and communications do not constitute methods of warfare unless they adversely affect the enemy’s military operations or military capacity³⁵.

²⁹ Ibidem.

³⁰ R. Meyer, *Russia probably won’t cut off Europe’s gas, because It’s ‘essentially an act of war’*, <https://www.theatlantic.com/science/archive/2022/02/why-europe-cant-shut-off-russian-gas/622925/> (accessed: 12.10.2024). Quoting Nikos Tsafo, the James R. Schlesinger Chair in Energy and Geopolitics at the Center for Strategic and International Studies.

³¹ M.C. LaBelle, *Energy as a weapon of war: lessons from 50 years of energy interdependence*, „Global Policy” 2023, No. 14, p. 541.

³² Ibidem, p. 543.

³³ Ibidem, p. 544.

³⁴ *Manual on international law applicable to air and missile warfare*, Harvard University Program on Humanitarian Policy and Conflict Research, Cambridge (US) 2009, p. 5, Rule 1(v).

³⁵ *Commentary on the HPCR manual on international law applicable to air and missile warfare*, Harvard University Program on Humanitarian Policy and Conflict Research, Cambridge (US) 2010, pp. 43–44.

There is no treaty definition of “means of warfare”³⁶. For instance, Article 35 of Additional Protocol I uses the term “methods or means” but no definition is provided³⁷. Similarly, Article 36 uses the phrase “new weapon, means or method of warfare” but no definition is provided there either³⁸. Nevertheless, some international military manuals offer definitions of the term.

According to the NATO Tallinn Manual, the term “means of warfare” encompasses both weapons and weapon systems. A weapon is understood as “that aspect of the system used to cause damage or destruction to objects or injury or death to persons”³⁹. Means of warfare therefore include “any device, materiel, instrument, mechanism, equipment, or software used, designed, or intended to be used to conduct an attack”⁴⁰, the latter term understood as “acts of violence, in the sense of violent consequences and not their nature”⁴¹. Accordingly, non-violent operations, such as psychological cyber operations and cyber espionage, do not qualify as attacks⁴².

Similarly, the *Newport Manual* links the term “means of warfare” (“weapon”) to the notion of “attack” (“acts of violence against an adversary that occur during armed conflict, the effects of which include injury, damage, destruction, or death”⁴³). Accordingly, an object that is designed to produce, or intended to produce, such effects would qualify as a “means of warfare”⁴⁴.

This conclusion – referring to any new means, “constantly emerging as technology develops”⁴⁵ – has been also supported in the doctrine writings.

The International Committee of the Red Cross refers to “means of warfare” as the “weapons and weapon systems using which violence is exercised against the enemy”⁴⁶.

According to William Boothby, “[t]he critical factor concerning all weapons is the injurious or damaging effect that they have on the persons and/or objects associated with the adverse party to the conflict”⁴⁷.

³⁶ *Newport manual on the law of naval warfare*, „International Law Studies” 2023, No. 101, p. 98.

³⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 3, Art. 35.

³⁸ *Ibidem*, Art. 36.

³⁹ *Tallinn manual 2.0 on the international law applicable to cyber operations*, Cambridge–New York 2017, p. 452, Rule 103.

⁴⁰ *Ibidem*, pp. 452–453, commentary to Rule 103.

⁴¹ *Ibidem*, p. 415, commentary to Rule 92.

⁴² *Ibidem*.

⁴³ *Newport manual*..., p. 98.

⁴⁴ *Ibidem*.

⁴⁵ *Ibidem*.

⁴⁶ International Committee of the Red Cross, *Weapons*, [in:] ICRC, *How does law protect in war? Glossary*, online edition, https://casebook.icrc.org/a_to_z/glossary/weapons (accessed: 4.11.2024).

⁴⁷ W.H. Boothby, *Methods and means of cyber warfare*, „International Law Studies” 2013, No. 89, pp. 388–389. See also J.T. Biller, M.N. Schmitt, *Classification of cyber capabilities and*

Paul Walker adds sarcastically, “if one considers that the purposes of the law of armed conflict are to prevent unnecessary suffering to both combatants and noncombatants, as well as to prevent harm to civilians and civilian objects from attacks, weapons are the devices that are used in attacks to cause such suffering”⁴⁸.

This violent effects-based view is consistent with the definitions of “weapon” used by the armed forces of the United States.

In 2018, the Air Force rewrote its instruction to require not only legal reviews of “weapons”⁴⁹, but also legal reviews of “cyber capabilities”, which are broadly defined to include almost any effect created in cyberspace, not just the types of effects (death and injury to persons and property damage) caused by weapons: “An Air Force cyber capability requiring a legal review before development or acquisition is any device, computer program or computer script, including any combination of software, firmware or hardware intended to deny, disrupt, degrade, destroy or manipulate adversarial target information, information systems, or networks in a conflict or other military operation. Cyber capabilities are neither weapons nor nonlethal weapons and do not include a device, computer program or computer script solely intended to provide access to adversarial and targeted computers, information systems or networks”⁵⁰.

The Naval Service (Navy and Marine Corps) guidance defines weapons that must undergo legal review as items “that are intended to have an effect of injuring, damaging, destroying, or disabling personnel or property, to include non-lethal weapons”⁵¹.

The Army’s instruction is older, being last revised in 1979. It also defines weapons as “all arms, munitions, materiel, instruments, mechanisms, devices, and those components required for their operation, that are intended to have an effect of injuring, damaging, destroying, or disabling personnel or property, to include non-lethal weapons”⁵².

operations as weapons, means, or methods of warfare, „International Law Studies” 2019, No. 95, p. 219. Defining a „means of warfare” as the „instrumentality that directly causes the terminal effect of death, injury, damage, or destruction”.

⁴⁸ P. Walker, *Organizing for cyberspace operations: selected issues*, „International Law Studies” 2013, No. 89, p. 345.

⁴⁹ US Department of the Air Force, *Legal reviews of weapons and cyber capabilities*, Air Force Instruction 51-401 (AFI 51-401), p. 13, https://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-401/afi51-401.pdf (accessed: 14.10.2024). Defining weapons as „devices designed to kill, injure, disable or temporarily incapacitate people or destroy, damage, disable or temporarily incapacitate property or materiel”. The term „weapon” does not include a device developed and used for training, or launch platforms to include aircraft and intercontinental ballistic missiles”.

⁵⁰ Ibidem.

⁵¹ Department of the Navy, *Guidance for operation of the defense acquisition system and the joint capabilities integration and development system*, SECNAV M-5000.2, pp. 9–13, <https://www.secnav.navy.mil/rda/Policy-OLD/Department%20of%20the%20Navy/50002Mdoni35.pdf> (accessed: 14.10.2024).

⁵² Department of the Army, *Review of legality of weapons under international law*, Army Regulation 27-53, para. 3a, <https://irp.fas.org/doddir/army/ar27-53.pdf> (accessed: 14.10.2024).

To conclude, “[e]xisting law is best captured by defining weapon as “an object designed for, and developed or obtained for, the primary purpose of killing, maiming, injuring, damaging or destroying”⁵³.

Notion of a “hybrid weapon” in “hybrid conflict” as exemplified by the Russian “energy weapon”

Given the above, “energy weapon” does not constitute a “means of warfare” (“weapon”) in the meaning of the law of armed conflict. Its non-violent hallmark fits better to the characteristics of a hybrid threat⁵⁴ or a hybrid interference⁵⁵.

Indeed, a notion of “means of warfare” or “weapon of war” is a function of the concept of war. War, however, is “considered a legal term of the past that has no substance in modern international law”⁵⁶, is just one of three types of contemporary adversarial relationships between States – the other two are a hybrid conflict and a competition below armed conflict – and least consistent with the reality of “nuclear weapons and large armies”⁵⁷ and a constitutional reform⁵⁸ of the international public law, transforming unilateral and discretionary prerogative to use force “to advance and protect the interests of the State”⁵⁹ into an “absolute, all-inclusive prohibition” on the use of force⁶⁰.

⁵³ G.D. Brown, A.O. Metcalf, *Easier said than done: legal reviews of cyber weapons*, „Journal of National Security Law and Policy” 2014, No. 7, p. 135. Defining a kinetic and/or a cyber weapon.

⁵⁴ M. Weissmann, *Hybrid warfare and hybrid threats today and tomorrow: towards an analytical framework*, „Journal on Baltic Security” 2019, No. 5(1), p. 18. Defining „hybrid threat” as „passive, real or imagined threats from possible future actions” in contrast to “active measures taken by an actor towards another actor” recognised as a „hybrid warfare”. See also E. Jakubiak, *Hybrid warfare as a new type of armed conflict in the modern world*, „Studia Bezpieczeństwa Narodowego” 2022, No. 24, p. 80. Referring to the use of state-sponsored but not officially affiliated actors who do not resort to physical violence.

⁵⁵ J.C. Bergaust, S.R. Sellevåg, *Improved conceptualising of hybrid interference below the threshold of armed conflict*, „European Security” 2024, No. 33(2), p. 169. Defining „hybrid interference” as a „non-military practices for the mostly covert manipulation of other states’ strategic interests”.

⁵⁶ S.A. Yeini, *War*, „University of Pennsylvania Journal of International Law” 2023, No. 44(3), p. 701.

⁵⁷ N. Peterson, *The Chinese Communist Party’s theory of hybrid warfare*, pp. 2–3, <https://www.understandingwar.org/backgrounder/chinese-communist-partys-theory-hybrid-warfare> (accessed: 16.11.2024). Quoting Xu Sanfei, People Liberation Army News theory department editor.

⁵⁸ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16, Art. 103.

⁵⁹ M. van Creveld, *The transformation of war*, New York 1991, p. 142.

⁶⁰ R. Fordoński, *Selected legal problems of conventional deterrence*, Olsztyn 2018, p. 126, footnote 188.

War is defined as “a contention between two or more States through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases”⁶¹, is even less suitable for a description of a Russian contemporary concept of conflict against the West.

Russia does not possess the military potential necessary to challenge NATO in a conventional armed conflict: “The inescapable fact is that any Russian assault or incursion against NATO would prompt an overwhelming response. The thousands of Allied troops currently stationed in Poland and the Baltic states could draw on the 3.5 million uniformed personnel across the Alliance for reinforcement. NATO’s combat air forces – which outnumber Russia’s 3 to 1 – would quickly establish air superiority. NATO has four times as many ships and three times as many submarines as Russia (...). With a collective GDP twenty times greater than Russia. And a total defence budget three-and-a-half times more than Russia and China combined. Plus, NATO has the additional strategic depth of a population of over 1 billion. And sitting above all of this is NATO as a nuclear alliance. The biggest reason that Putin doesn’t want a conflict with NATO is because Russia will lose. And lose quickly”⁶².

The Kremlin, therefore, regards war as an “all-encompassing endeavor with a strong cognitive component”⁶³, in which “the battlefield is the human mind”⁶⁴, and the goal – a reflexive control, which “aims to steer Western decisions to benefit Russia’s strategic interests and undermine democratic institutions”⁶⁵.

*Gibridnaya voyna*⁶⁶ incorporates a variety of “peacetime” techniques⁶⁷, including the weaponisation of energy supplies, designed to “precede or even replace military action”⁶⁸. This “full spectrum” school or, according to NATO terminology, the “DIMEFIL” (“diplomatic, information, military, economic,

⁶¹ L. Oppenheim, *International law: a treatise*, Vol. 2: *Disputes, war and neutrality*, London 1952, p. 202.

⁶² G. Beebe et al., *Right-Sizing the Russian threat to Europe*, p. 14, <https://quincyinst.org/research/right-sizing-the-russian-threat-to-europe/#> (accessed: 18.11.2024). Quoting the Chief of the British Defence Staff, Admiral Sir Anthony Radikin.

⁶³ M. Domańska, *Lost in translation: Western misconceptions about Putin’s Russia*, p. 3, <https://cepa.org/comprehensive-reports/lost-in-translation-western-misconceptions-about-putins-russia/> (accessed: 17.11.2024).

⁶⁴ A. Bryc, M. Domańska, *Russia in the trenches of cognitive warfare*, <https://neweasterneurope.eu/2024/09/09/russia-in-the-trenches-of-cognitive-warfare/> (accessed: 12.09.2024).

⁶⁵ M. Domańska, op. cit., p. 3.

⁶⁶ „A style of warfare that combines the political, economic, social and kinetic measures in a conflict that recognizes no boundaries between civilian and combatant, covert and overt, war and peace” – M. Galeotti, *Hybrid war or gibridnaya voyna: getting Russia’s non-linear military challenge right*, Prague 2016, p. 7.

⁶⁷ M. Domańska, op. cit., p. 3.

⁶⁸ A. Bryc, M. Domańska, op. cit.

financial, intelligence and legal”) spectrum” school⁶⁹, does not “aim for brutal annihilation of the enemy army but rather to paralyse his nervous system and cause him to change his behaviour”⁷⁰. In such “hybrid conflict”, when Moscow does not use armed forces, but military intimidation and economic, political, diplomatic or technological pressure tools⁷¹, “[f]ear is the main raw material exported by Russia”⁷².

The Russian “energy weapon” has been an exception to this rule, being “more than an economic and political pressure tool”⁷³. This “strategic corruption project”⁷⁴, designed as an instrument of “the ability to export corruption and involvement of Western European elites in money laundering schemes”⁷⁵, has been conceptualized as “a pillar of the Kremlin’s asymmetric power projection”⁷⁶. This approach has been based on three elements.

First, energy sales have been critical for the Russian economy and the government’s ability to deliver basic services to the population, in addition to be the cornerstone of the strategy to rebuild Russia’s military potential⁷⁷ and Moscow’s ability to finance the aggression on Ukraine.

Russia depends on its exports of oil and gas for macroeconomic stability and government financing. As Russian energy export revenues were about

⁶⁹ T.C. Tomescu, *Is Russia that powerful in hybrid warfare?*, „International Scientific Conference The Knowledge – Based Organization” 2017, No. 23(1), p. 317.

⁷⁰ O.E. Jensen, *Information warfare: principles of third-wave war*, „Airpower Journal” 1994, No. 8(4), p. 42.

⁷¹ E. Hoorickx, *Countering „hybrid” threats: Belgium and the Euro-Atlantic strategy*, „Royal Higher Institute for Defence Security and Strategy” 2017, No. 131, pp. 3–4, <https://www.defence-institute.be/wp-content/uploads/2020/03/ss-131-en.pdf> (accessed: 16.05.2024).

⁷² *Sabotage of the Nord Stream gas pipelines: an act of hybrid war?*, <https://energynews.pro/en/sabotage-of-the-nord-stream-gas-pipelines-an-act-of-hybrid-war/> (accessed: 16.09.2024). Quoting Professor Veli-Pekka Tynkkynen from the Finnish Centre for Russian and East European Studies.

⁷³ N. Bugayova, F. Kagan, *Nord Stream 2 poses a long-term national security challenge for the US and its allies*, p. 3, <https://www.understandingwar.org/sites/default/files/Nord%20Stream%202%20Dec%202021.pdf> (accessed: 18.09.2024).

⁷⁴ J. Janda on X, https://x.com/_JakubJanda/status/1797294670462026058 (accessed: 17.11.2024). „Strategic corruption” is defined as „State strategies to influence public policies outside the lawful process of diplomatic relations and agreements between States”. See *Expert Report on inquiry and assessment on political interference and recommendations on its prevention report for the European Parliament’s Socialists and Democrats (S&D) group in the European Parliament*, p. 16, https://www.socialistsanddemocrats.eu/sites/default/files/2023-07/expert_report_sd_internal_inquiry_230705_0.pdf (accessed: 17.11.2024).

⁷⁵ S. Dębski, *Nord Stream 2: German and U.S. credibility suffers serious damage*, https://www.pism.pl/publikacje/Nord_Stream_2_German_and_US_Credibility_Suffers_Serious_Damage (accessed: 17.11.2024).

⁷⁶ N. Bugayova, F. Kagan, op. cit., p. 3.

⁷⁷ In 2000, proceeds from oil and gas accounted for 22% of budget revenue (3.4% of the GDP), to reach 50% of budget revenue (12% of the GDP) in 2008. At the same time, defence spending increased substantially. The military budget grew at a regular pace, from US\$6 billion in 2000 to US\$43 billion in 2008 (around US\$120 billion at purchasing power parity), while remaining around the level of 3% of the GDP. See M. Kaczmarek, *Russia’s revisionist policy towards the West*, Warsaw 2009, pp. 54–55.

€1 billion a day before February 2022⁷⁸, oil and gas-related taxes and export tariffs have accounted for more than 40% of Russia's federal budget annually up to 2023. These revenues are also historically correlated with the country's regular military expenditure⁷⁹.

Fossil fuel exports have been a key enabler of the full-scale war against Ukraine. Moscow earned €158 billion in revenue from fossil fuel exports in the first six months of the war (24 February to 24 August 2022). As the EU imported 54% of this volume, worth approximately €85 billion, these fossil fuel exports contributed €43 billion to Russia's federal budget since the start of the invasion up to end of August 2022⁸⁰.

The second, even more troublesome, purpose is that Russia can exert control over natural gas flows to influence Europe. With Russian pipelines have come Russian influence networks as the Kremlin's approach has been based on using energy sales for establishing a network of economically dependent people to spread Kremlin-friendly narratives and shape perceptions in Europe⁸¹.

Third, as members of Ukraine's civil society wrote in their letter to the US Senate Foreign Relations Committee concerning the extension of US sanctions on Russia's Nord Stream 2 gas pipeline, "[t]his pipeline, which was constructed by Moscow for the sole purpose of bypassing Ukraine and leaving it susceptible to Russian aggression, (...) would also hamper Ukraine's vibrant civil society and demoralize Ukraine's citizens. This would further Putin's broader goal of erasing Ukrainian sovereignty"⁸².

In other words, the Russian "energy weapon" designed as disruptive instead of destructive capacity, could be used in the form of a "stealth invasion"⁸³. In what is widely considered as an exposé of Russian thinking on hybrid conflict, General Valery Gerasimov, Chief of the General Staff of the Russian Federation, noted in 2013 that "the role of non-military means of achieving political and strategic goals has grown, and in many cases, they have exceeded

⁷⁸ P. Katinas, V. Raghunandan, *August 2024 – Monthly analysis of Russian fossil fuel exports and sanctions*, <https://energyandcleanair.org/august-2024-monthly-analysis-of-russian-fossil-fuel-exports-and-sanctions> (accessed: 17.09.2024).

⁷⁹ *Financing Putin's war: fossil fuel exports from Russia in the first six months of the invasion of Ukraine*, p. 1, <https://energyandcleanair.org/wp/wp-content/uploads/2022/09/Final-Financing-Putins-war-Fossil-fuel-exports-from-Russia-in-the-first-six-months-of-the-invasion-of-Ukraine.pdf> (accessed: 28.09.2024).

⁸⁰ Ibidem, p. 3. In other words, Europe has been paying for Russia's attack on its smaller, democratic neighbor with one hand because it has been still buying Russian energy exports.

⁸¹ N. Bugayova, F. Kagan, op. cit., p. 3.

⁸² *Ukrainian civil society leaders call for extension of Nord Stream 2 sanctions*, <https://www.atlanticcouncil.org/blogs/ukrainealert/ukrainian-civil-society-leaders-call-for-extension-of-nord-stream-2-sanctions/> (accessed: 17.11.2024).

⁸³ A. Jacobs, G. Lasconjarias, *NATO's hybrid flanks: handling unconventional warfare in the South and the East*, [in:] G. Lasconjarias, J.A. Larsen (eds.), *NATO's response to hybrid threats*, Rome 2015, p. 259.

the power of force of weapons in their effectiveness”⁸⁴. Hence the strong but false belief, implemented in winter 2021/2022 that “Russia can knock down and destroy the State without direct military intervention conducted on a large scale”⁸⁵.

To conclude, energy is undoubtedly a weapon of war as understood to be a kinetic instrument of a conventional, inter-State armed conflict. In October 2022, for instance, Russian armed forces started deliberately targeting gas and electricity infrastructure facilities⁸⁶. After Ukraine has also significantly intensified its assaults on Russian energy infrastructure⁸⁷, Moscow resumed a large-scale, coordinated campaign of attacks on Ukraine’s counterpart⁸⁸.

Nevertheless, the Russian “energy weapon” has been also used in a unconventional, outside-battlefield capacity – as a “hybrid weapon”: a non-military and non-kinetic instrument of control through influence by manipulation of adversary’s economic interests during the “hybrid conflict” between the Russia and the European members of the Ukraine Defence Contact Group.

The essence of this “hybrid conflict” is the interplay of interests, which replaces the clash of military potentials, known from the classical Western theory of war⁸⁹. As the “hybrid conflict” replaces armed violence-based methods of warfare with non-violent strategies and means, Russian *modus operandi* involves manipulation of adversary’s interests by both corruption and blackmail.

⁸⁴ M. Galeotti, op. cit., p. 22.

⁸⁵ M. Banasik, *How to understand the hybrid war*, „Securitologia” 2015, No. 1, p. 27. This quotation applies to European States who sided with Ukraine in the conflict. Germany, for instance, had to spend „more than 100 billion euro” to replace Russian natural gas delivered via the Nord Stream and Nord Stream 2 pipelines with fuel from other sources, including LNG, as well as to support its citizens and businesses. See: *German chancellor calls for unbiased investigation into Nord Stream sabotage*, <https://tass.com/world/1843305> (accessed: 17.09.2024). Although Russian propaganda had been creating a fake reality where lack of Russian gas would raise energy prices so much that the resulting crisis would provoke chaos in European streets and, eventually, the sanctions against Russia would drop, Europe did not freeze to death without Moscow’s gas.

⁸⁶ From October 2022 through February 2023, Russian armed forces launched at least 13 waves of attacks with long-range cruise and ballistic missiles and loitering munitions on the electricity infrastructure across 19 of 24 regions of Ukraine and Kyiv. In result, the Ukrainian power system had lost nearly half of its available production capacity. See UN Human Rights Monitoring Mission in Ukraine, *Attacks on Ukraine’s energy infrastructure: harm to the civilian population*, p. 2, <https://ukraine.ohchr.org/en/Attacks-On-Ukraines-Electricity-Infrastructure> (accessed: 3.11.2024).

⁸⁷ M. Bernhart, *Targeting Russian oil refineries*, „International Conference Knowledge-Based Organization” 2024, No. 30(2), p. 1.

⁸⁸ Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/52/62549, pp. 3–4, para. 1, https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_79_4632_AUV.pdf (accessed: 3.11.2024).

⁸⁹ Joint Chiefs of Staff, *Doctrine for the Armed Forces of the United States*, p. I-5, <https://irp.fas.org/doddir/dod/jp1.pdf> (accessed: 15.10.2024), p. I-5: „A series of operations conducted against enemy centers of gravity” in order to ensure „the defeat of an adversary’s armed forces, the destruction of an adversary’s war-making capacity, and/or the seizure or retention of territory”.

“Energy weapon” is a preferable instrument of manipulation due to its potential of influence on economy and business spheres.

Is this still an armed conflict? The contemporary law of armed conflict uses the term “armed conflict”⁹⁰ to describe “[a]ny difference arising between two States and leading to the intervention of armed forces” or “committing a hostile act against another State”⁹¹. The latter means that “two or more States are engaged in hostilities with each other”⁹².

Meanwhile, “hybrid conflict” involving use of “energy weapon” against Ukraine before the full-scale invasion or the European members of the Ukraine Defence Contact Group since then, does not meet the conditions of a “use of armed force by one State Party to a conflict against another State”⁹³ or “the actual fighting” during the conflict⁹⁴.

At the same time, the implicated “hybrid conflict” does not meet the definition of a “competition below armed conflict”. The latter is described as a “non-violent and conducted under greater legal or policy constraints than in armed conflict actions outside of armed conflict against a strategic actor in pursuit of policy objectives”⁹⁵. “Competition below armed conflict” may include “economic activities and other non-violent activities to achieve mutually incompatible objectives, while seeking to avoid armed conflict”⁹⁶. Meanwhile Moscow, using “energy weapon” against Ukraine during winter 2021/2022, acted with a clear intention of expansion of the ongoing armed conflict with Kyiv, whereas the use of “energy weapon” against the Ukraine’s allies both before and after 24 February 2022 took place in context and connection with preparations for or implementation of the full-scale invasion of Ukraine.

Coming back to the notion of a “weapon” in a hybrid conflict, the term has been defined above as a cognitive instrument of corruption and intimidation in an imposed geopolitical calculus of enemy in a game of interests. In other words, a “hybrid weapon” is a 1) non-military and non-kinetic mecha-

⁹⁰ Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85, Art. 2(1).

⁹¹ International Committee of the Red Cross, *Convention relative to the protection of civilian persons in time of war: commentary*, Geneva 1958, p. 20.

⁹² *Commentary on the HPCR manual...*, p. 39.

⁹³ Federal Ministry of Defence, *Law of armed conflict manual: joint service regulation (ZDv) 15/2*, para. 203, <https://www.bmvg.de/resource/blob/93610/ae27428ce99dfa6bbd8897c269e7d214/b-02-02-10-download-manual-law-of-armed-conflict-data.pdf> (accessed: 13.04.2024).

⁹⁴ International Law Association Committee on the Use of Force, *Final report on the meaning of armed conflict in international law*, p. 9, https://www.rulac.org/assets/downloads/ILA_report_armed_conflict_2010.pdf (accessed: 13.04.2024).

⁹⁵ Joint Chiefs of Staff, *Competition continuum*, Joint doctrine note 1-19, p. 2, https://irp.fas.org/doddir/dod/jdn1_19.pdf (accessed: 16.10.2024).

⁹⁶ *Ibidem*.

nism of cost manipulation in an adversarial relationship; 2) an instrument of threat of force; 3) a method of “imposing our will on the enemy”⁹⁷ (a political and long-term objective (*Zweck*) in the classical Western theory of war) by means other than a violence (disruption and demoralisation instead of a destruction).

Clearly, a “hybrid weapon” in the form of an “energy weapon” does not constitute a “weapon” (“means of warfare”) in the meaning of the law of armed conflict. It does not involve a threat of force prohibited under Article 2(4) of the UN Charter⁹⁸, either (unlike other forms of “hybrid weapon”, e.g., the use of nuclear weapons in nuclear brinkmanship).

Does it constitute a use of force or interference in violation of the principle of non-intervention in contemporary international law?

Article 2(4) of the UN Charter does not limit the use of force to conventional weapons⁹⁹. The ICJ has confirmed that article 2(4) does “not refer to specific weapons and apply to the use of force regardless of the weapons employed”¹⁰⁰. Nonetheless, a weapon is commonly defined as a “thing designed or used for inflicting bodily harm or physical damage”¹⁰¹ and forms of non-physical coercion do not directly concern international peace and security but relate more to sovereign equality and the non-intervention principle¹⁰² (this especially applies to “energy weapon”, which uses an actual interdependence and a corruption susceptibility of neoliberal economics to violate energy security and domestic sovereignty of liberal democracies).

⁹⁷ C. von Clausewitz, *On war*, transl. and eds. M. Howard, P. Paret, Princeton 1984, p. 75.

⁹⁸ R. Fordoński, *Threat of force in contemporary international law*, Olsztyn 2015, p. 172. Defining the term as „any physical action or verbal statement that satisfies the following two criteria: 1) promises of harm due to use of force by the threatening State and; 2) communicates this promise by means of ultimatum or alternative demonstration of hostile intent”.

⁹⁹ International Law Association, *Submarine cables and pipelines in international law: third interim report 2024*, p. 45, para. 149, <https://cil.nus.edu.sg/wp-content/uploads/2024/07/ILA-Third-Report-on-Intentional-Damage-to-Submarine-Cables-and-Pipelines-May-2024-final-draft.pdf> (accessed: 1.09.2024).

¹⁰⁰ ICJ, *Legality of the threat or use of nuclear weapons*, advisory opinion, 8 July 1996, ICJ Rep 1996, p. 224–226, para. 39.

¹⁰¹ C. Henderson, *The use of force and international law*, Cambridge 2018, p. 56.

¹⁰² E. Pobjie, *Prohibited force: the meaning of ‘use of force’ in international law*, Cambridge–New York 2024, p. 116. See also M.E. O’Connell, *The power and purpose of international law: insights from the theory and practice of enforcement*, New York 2008, p. 164; C.E. Cameron, *Developing a standard for politically related state economic action*, „Michigan Journal of International Law” 1991, No. 13(1), p. 221; O. Schachter, *International law: the right of states to use armed force*, „Michigan Law Review” 1984, No. 82(5), p. 1626; D.W. Bowett, *Self-defence in international law*, Manchester 1958, p. 148. For opposite view see R.J. Zedalis, *Some thoughts on the United Nations Charter and the use of military force against economic coercion*, „Tulsa Law Review” 1982, No. 17(3); P.S. Dempsey, *Economic aggression and self-defense in international law: the Arab oil weapon and alternative American responses thereto*, „Case Western Reserve Journal of International Law” 1977, No. 9(2), p. 269; J.J. Paust, A.P. Blaustein, *The Arab oil weapon – a threat to international peace*, „American Journal of International Law” 1974, No. 68(3), pp. 416–417.

The 1970 *Declaration on Principles of International Law* fails to cite economic or political measures in the Principle on the use of force as well but does so regarding the Principle imposing a duty not to “intervene in matters within the domestic jurisdiction of any State”¹⁰³.

A second General Assembly Resolution on the subject takes an analogous approach. “Armed intervention” is tied to “interference or attempted threats against the personality of the State or against its political, economic and cultural elements”¹⁰⁴, whereas economic and political coercion are cited in the context of “the subordination of the exercise of sovereign rights” and securing “advantages of any kind” from the target State¹⁰⁵.

This conclusion finds confirmation in State practice after 1945. Egyptian restrictions on goods and other economic and cultural sanctions against Israel during the early 1950s were not considered by states to be a use of force¹⁰⁶. Economic and political sanctions by the United States against Cuba during the early 1960s, including the reduction of the sugar quota, were also not considered to be a use of force¹⁰⁷.

Conclusions

The above analysis discusses selected issues generated by a legal assessment of the Russian instrument of energy blackmail from the perspective of the law of armed conflict and the law on the use of force in international relations.

¹⁰³ GA Res. 2625 (XXV) of 24 October 1970, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, Annex, Principle 3, commentary: „No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. (...) Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State”.

¹⁰⁴ GA Res 42/22 of 18 November 1987, Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, Annex, Art. 1(7).

¹⁰⁵ Ibidem, Annex, Art. 1(8).

¹⁰⁶ R. Higgins, *The legal limits to the use of force by sovereign states: United Nations practice*, „British Yearbook of International Law” 1961, No. 37, p. 277.

¹⁰⁷ A.M. Rifaat, *International aggression. A study of the legal concept: its development and definition in international law*, Stockholm 1979, p. 267; I. Brownlie, *The use of force in self-defence*, „British Yearbook of International Law” 1961, No. 37, p. 255; O. Schachter, *In defense of international rules on the use of force*, „University of Chicago Law Review” 1986, No. 53, pp. 126–127: „The political case for revision includes another argument: if individual force is limited to self-defense, states may have no adequate means of resisting violations of their legal rights. This does not leave states without remedies. Aggrieved states may employ economic and other non-military countermeasures respond to illegal actions”.

Against a background of a cursory review of the use of “energy weapon” against Ukraine and the European members of the Ukraine Defence Contact Group in the years 2005–2022, the article introduces concepts of “energy weapon”, “hybrid conflict” and “hybrid weapon”.

“Energy weapon” is defined as a non-military instrument of State power to achieve political aims in a new kind of conflict (“hybrid conflict”) in the capacity of both a tool of foreign policy (“political weapon”) as well as an instrument of defence and security policy (“weapon of war”). In the latter case, “energy weapon” is designed as “hybrid weapon” – an instrument of control through influence by manipulation of adversary’s economic interests. Accordingly, “hybrid conflict” is an implementation of a strategy of control under conditions of an inter-State game of interests and a “nothing but the continuation of war with other means”. Applying this conclusion to the realities of the Russian-Ukrainian conflict, the Russian use of “energy weapon” against Europe in the years 2021–2022 has been an attempt to control the NATO’s behaviour without the need for an active demonstration of force (for example in the form of nuclear brinkmanship or a covert use of armed force).

As “hybrid conflict” replaces armed violence-based methods of warfare with non-violent strategies and means, the Russian “energy weapon” has involved manipulation of adversary’s economic interests by both strategic corruption and blackmail due to its potential of influence on business and political spheres.

While “hybrid conflict” does not meet the treaty definition of an armed conflict, it also fails to be recognised as “competition below armed conflict”. The above analysis indicates “hybrid conflict” is an intermediate concept between hybrid threats and hybrid war (warfare).

Evolution of a contemporary conflict from the traditional, kinetic form to a hybrid, cognitive warfare involves an evolution of a notion of weapon as well. According to the legal definition, a “weapon” means a kinetic instrument of a conventional, inter-State armed conflict. On the other hand, a “hybrid weapon” is a 1) non-military and non-kinetic mechanism of cost manipulation in a adversarial relationship; 2) an instrument of threat of force; 3) a method of “imposing our will on the enemy” by means other than a violence (disruption and demoralisation instead of destruction).

“Hybrid weapon” understood in this way does constitute neither “weapon” (“means of warfare”) in the meaning of the law of armed conflict nor a threat of force prohibited under Article 2(4) of the UN Charter. Classified a “hybrid interference”, “hybrid weapon” violates principles of sovereign equality and the non-intervention.

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Summary

Notion of hybrid weapon in hybrid conflict – legal assessment of Russian Federation’s use of energy weapon against European allies of Ukraine

Keywords: law of armed conflict, law on use of force in international relations, hybrid conflict, hybrid weapon, weaponisation of energy supplies, energy weapon.

Russia has used energy supplies as a weapon to influence and coerce its neighbours and perceived enemies since 1990, recently, against the European members of the Ukraine Defence Contact Group since April 2022. The research aim of this study is a legal assessment of the Russian instrument of energy blackmail from the perspective of the law of armed conflict and the law on the use of force in inter-State relations. The analysis introduces notions of hybrid conflict, hybrid weapons and energy weapons. An intermediate concept between hybrid threats and hybrid warfare, hybrid conflict does not meet the treaty definition of an armed conflict as it replaces armed violence-based methods of warfare with a cognitive mechanism of disruption and manipulation. A hybrid weapon is a non-military instrument of cost manipulation in a hybrid conflict that is understood as an interplay of economic interests instead of a clash of military potentials. It constitutes a means of warfare in the meaning of the law of armed conflict or a threat of force prohibited under Article 2(4) of the UN Charter. Classified a “hybrid interference, “hybrid weapon” violates principles of sovereign equality and the non-intervention. Energy weapon involves manipulation of adversary’s economic interests by both strategic corruption and blackmail due to its potential of influence on business and political spheres.

Streszczenie

Koncepcja broni hybrydowej w konflikcie hybrydowym na przykładzie użycia przez Federację Rosyjską broni energetycznej przeciwko europejskim sojusznikom Ukrainy

Słowa kluczowe: prawo konfliktów zbrojnych, prawo użycia siły w stosunkach międzynarodowych, konflikt hybrydowy, broń hybrydowa, użycie dostaw energii jako broni, broń energetyczna.

Federacja Rosyjska używa eksportu gazu ziemnego jako broni od 1990 r., w latach 2021–2022 w celu szantażu energetycznego europejskich członków Grupy Kontaktowej ds. Obrony Ukrainy. Celem badawczym pracy jest ocena

prawna rosyjskiego instrumentu szantażu energetycznego z perspektywy definicji broni w prawie konfliktów zbrojnych i prawie o użyciu siły w stosunkach międzynarodowych. Przeprowadzone badania wprowadzają koncepcje konfliktu hybrydowego broni hybrydowej oraz broni energetycznej. Będący formą pośrednią między zagrożeniami hybrydowymi a wojną hybrydową konflikt hybrydowy jest formułą realizacji celów politycznych wojny za pomocą kognitywnego mechanizmu zakłóceń i manipulacji, zastępujący użycie siły zbrojnej. W efekcie konflikt hybrydowy nie jest konfliktem zbrojnym w rozumieniu prawa międzynarodowego. Broń hybrydowa, która jest niewojskowym instrumentem manipulacji kosztami przeciwnika w grze interesów ekonomicznych, nie stanowi broni w rozumieniu prawa konfliktów zbrojnych ani groźby użycia siły, zakazanej na podstawie art. 2(4) Karty Narodów Zjednoczonych. Sklasyfikowana jako ingerencja hybrydowa stanowi natomiast naruszenie zasad suwerennej równości państwa oraz nieingerencji w sprawy wewnętrzne i zewnętrzne państwa. Artykuł analizuje użycie broni energetycznej przez Federację Rosyjską, definiując to pojęcie jako instrument kontroli poprzez wpływ ekonomiczny realizowany za pomocą korupcji strategicznej i szantażu.

